

# **MINUTES OF THE COMMISSION FOR HUMAN RIGHTS**

**February 22, 2008**

**A regular meeting of the Commission for Human Rights was held in the agency conference room on Friday, February 22, 2008. Present at the meeting were, Iraida Diaz Williams, Alberto Aponte Cardona, Dr. John B. Susa and Rochelle Lee. Absent were, Camille Vella-Wilkinson, Nancy Kolman Ventrone and Alton W. Wiley, Jr. The Chair, Dr. Susa, called the meeting to order at 9:20 a.m.**

**A motion was made to approve the minutes of January 25, 2008 by Commissioner Williams. The motion to approve was seconded by Commissioner Cardona and carried.**

**Status Report: Michael D. Évora, Executive Director**

**A written report was handed out. All new information is in bold print.**

**Case Production Report – Attached**

**Aged Case Report - Attached**

**Outreach Report - Attached**

## **STATUS REPORT - COMMISSIONERS-**

**GENERAL STATUS:** Dr. Susa reported that the Commission's Website needs to be updated and more useful to viewers.

**OUTREACH:** No report at this time.

**Commissioner Meeting -2- February 22, 2008**

**STATUS REPORT - LEGAL COUNSEL, Cynthia M. Hiatt and Francis Gaschen**

**LITIGATION:** report attached.

**LEGISLATION:** Crucial bills were discussed. The Commissioners decided that they would not take a position on bills H7773 or S2762.

**REGULATIONS: No discussion at this time.**

**HEARING SCHEDULE: Discussed**

**DECISIONS: No discussion at this time.**

**The Commissioners discussed ruling sheets. The discussion will continue at the next meeting.**

**The meeting adjourned at 11:25 a.m. The next regular meeting of the Commission is scheduled for Friday, March 28, 2008 at 9:00 am.**

**Respectfully Submitted,**

**Michael D. Évora  
Executive Director**

**Notes taken by: B. Ross  
EXECUTIVE DIRECTOR'S  
REPORT TO COMMISSIONERS  
FEBRUARY 22, 2008**

**I. BUDGET**

**The Governor has submitted his 2008 Proposed Supplemental Budget as well as his Recommendations for FY 2009. The particulars are as follows:**

**S = State/General Revenue; F = Federal (EEOC/HUD)**

	<b>FY 2008</b>	<b>FY 2008</b>	<b>FY 2009</b>	<b>FY 2009</b>
	<b>(Rev. Req.)</b>	<b>(Gov. Rec.*)</b>	<b>(Request**)</b>	<b>(Gov. Rec.)</b>
<b>S</b>	<b>984,197</b>	<b>951,677</b>	<b>885,777</b>	<b>991,659</b>
<b>F</b>	<b>379,190</b>	<b>370,890</b>	<b>395,049</b>	<b>391,309</b>
<b>T</b>	<b>1,363,387</b>	<b>1,322,567</b>	<b>1,280,826</b>	<b>1,382,968</b>

**\*The Governor's 2008 Supplement Budget contains a \$32,520 reduction in General Revenue for the Commission. This reduction consists of: 1) savings from proposed six furlough (unpaid leave) days between now and June 30; 2) savings from proposed "medical benefit holidays" – three pay periods during which state agencies will not be charged for health insurance premiums.**

**\*\*The Commission's FY 2009 Budget Request contained a 10% general (state) revenue reduction, as required by the Governor. The anticipated impact of this reduction, if it is implemented, is the loss of 2 investigative positions effective July 1, 2008, leaving the Commission at 12.5 FTEs. I incorporated impact statements into the budget submission attesting to the devastating effect such a loss would have on the Commission's ability to carry out its mission. After reviewing our submission, the Budget Office decided not to**

recommend the 10% reduction/FTE loss. The Budget Office forwarded its recommendations to the Governor, who did not recommend the revenue reduction.

## **II. FEDERAL CONTRACTS**

**EEOC – For federal FY 2008, according to EEOC Project Director Marlene Toribio, we have closed 81 co-filed cases. We likely will not receive official word on our contract until February/March 2008.**

**HUD – For FY 08, according to HUD Project Director Angela Lovegrove, we have taken in 26 new housing charges, 23 of which are co-filed with HUD. Within this same time period, we have processed 23 housing charges, 21 of which were co-filed with HUD.**

## **III. PERSONNEL**

**&#9679;Bumping: The “bumping” process (set in motion by the Governor’s layoffs of November 2007) is now complete. With the exception of the attempted bump discussed below, no staff members have been adversely affected by union employees outside of the agency with more seniority.**

**As reported last month, an individual whose Interpreter position with**

DHS was eliminated attempted to “bump” into an Investigator position during the first round of bumps. After reviewing her résumé/ submission, I notified the state’s Personnel Administrator that I determined she did not meet the minimum qualifications for the position. She filed a grievance against the Commission and the matter went directly to arbitration via an expedited process.

The arbitration hearing was held on February 19, 2008. George Rinaldi, an attorney with the Labor Relations Division of the Dept. of Administration, represented the Commission. Final briefs are due to the Arbitrator by February 29. A decision will issue some time thereafter.

#### **IV. OUTREACH – Refer to attached report**

Angela Lovegrove, HUD Project Director, is spearheading the effort to engage in a novel outreach. She and other Commission staff have met with a representative of ScreenVision and are exploring the possibility of having a Commission “ad” appear on all screens in two cineplexes in Rhode Island (Providence Place Mall and Warwick Showcase). The ad spot would involve a 10-second blurb on the agency appearing on screen before every movie shown in each theatre for a four-week period from the end of March to the end of April. The ad would be seen by an estimated 40,000 moviegoers weekly. The cost of the outreach would be covered by funding received from EEOC at the end of the last federal fiscal year that was

**expressly intended for outreach purposes. A contract has been signed and the particulars of the layout of the ad spot are being finalized.**

## **V. GENERAL STATUS**

**&#9679;Meetings with staff members – I continue to meet with individual investigative staff members on a monthly basis to monitor case production.**

**&#9679;Case Closures – Refer to attached report.**

**&#9679;Aged Cases – Refer to attached report. Progress continues to be made on decreasing the aged caseload. The Commission successfully reduced the aged caseload by 63% in federal FY 2007 (from 8 to 3 cases).**

**&#9679;Overall Case Inventory – The Commission had over 1000 cases in its inventory at the end of FY 98. We ended FY 07 with approx. 355 cases in inventory. As of 2/14/08, we had a total of 337 cases in inventory.**

**&#9679;National Fair Housing Training Academy (NFHTA) – Susan Gardner (Housing Outreach) will attend Week Five during the Spring. Susan Pracht (Housing Backup/Housing Outreach) and Zaida Rivera (Housing Outreach) have successfully completed Weeks One and**

**Two and will attend Week Three next week. Jason Flanders (Housing Outreach) will attend Week Two in April. Attendance for NFHTA courses is fully funded by HUD.**

**&#9679;Annual Report – The final draft of the Commission’s FY 07 Annual Report was sent to the printer at the end of January. The reports should be ready for distribution within a week or two.**

**&#9679;Annual EEOC FEPA Directors’ Conference – This year’s conference (fully funded by EEOC) will be held in Los Angeles from February 25-27. Marlene Toribio, EEOC Project Director, will attend the conference in my place.**

**&#9679;HUD National Policy Conference – This year’s conference will be held in Atlanta, GA from April 7-11. The Commission will receive full HUD funding to send four individuals. Frank Gaschen and Angela Lovegrove (HUD Project Director) have registered to attend. HUD has authorized the attendance of Commissioners Lee and Ventrone; they have worked with Susan Pracht on registration and travel arrangements.**

**&#9679;In an effort to reduce unnecessary agency spending, I have retrieved 81 boxes of case files which were in paid storage with Capitol Records since the mid- to late-1980s. Over the course of the next months, Cynthia and I will review the boxes to identify case files eligible for destruction and those which have historic or**



**precedent-setting value, to be maintained here at the office.**

**Respectfully submitted,**

**Michael D. Évora**

**Executive Director**

**Attachments**

**To: Commissioners**

**From: Cynthia Hiatt and Frank Gaschen, Legal Counsels**

**Re: Litigation**

**Date: February 22, 2008**

**Recent developments are in bold.**

**Aquidneck Island v. RICHR, et al.**

**This suit was brought by the plaintiff against multiple parties, alleging that liens have been placed on its property improperly. All liens were against Norman Cardinale not Aquidneck. Case is moot now.**

**Babbitt v. Crescent Park Manor, et al.**

**The Commission intervened as a party plaintiff in this case. Discovery is on-going.**

**Bagnall v. RICHR and WLWC et al.**

**The complainant appealed the Commission Decision and Order. The**

**Commission filed the administrative record on April 12, 2006. The parties are circulating a briefing stipulation. The complainant's attorney has represented to the Commission that he will file a brief and give the RICHR and respondents whatever reasonable amount of time they would like to file briefs in opposition.**

#### **Gaffney v Town of Cumberland et al**

**The respondent appealed the Commission decision. The parties and the Commission filed briefs. On November 2, 2007, the Commission received Judge Savage's Decision. Judge Savage held that the Commission had jurisdiction over the allegations and that the complainants were not required to appeal the Zoning Board decision before coming to the Commission. Judge Savage held that the Commission had made an error of law when it held that the Cumberland Planning Board had the authority to waive the frontage requirements. She held that the way the process should have worked is that the Gaffneys should have gotten conditional approval from the Planning Board, gone to the Zoning Board of Appeals with a request for a variance, received conditional approval from the Zoning Board and then returned to the Planning Board for final approval. Judge Savage did not reverse the Commission Decision; she remanded it for the Commission to determine how the Commission would evaluate the evidence, given knowledge of the proper procedure. Judge Savage also asked the Commission to re-assess its Order which ordered the Zoning Board of Appeals to either grant the subdivision of the property or pay the complainants their expenses**

from going through the process, as the Zoning Board of Appeals may or may not have had the authority to provide subdivision approval. Justice Savage suggested that the parties consider whether Mrs. Gaffney should re-apply for subdivision of her property, following the proper procedure. Counsel wrote to the attorneys for the parties, given them several alternative steps and asked them how they would like to proceed. The respondent's attorney has said that it would like Mrs. Gaffney to re-apply for subdivision under certain conditions. An associate of Mrs. Gaffney's attorney phoned to say that Mr. Haupt is not well and to ask what needs to be done. I faxed him the November letter. He did not reply to it. I sent a letter to both parties on Jan. 17, asking them to notify the Commission by Jan. 31 if they agreed on a course of action or if they were requesting an additional evidentiary hearing. The letter stated that if they did not reply by Jan. 31, the Commission would set dates for them to submit memoranda and then reconsider the Commission decision in light of Judge Savage's decision. On January 30, 2008, I was contacted by Mr. Haupt's law office; Maureen Gemma will be taking over the case. She requested and has been granted a thirty day extension to reply to the Commission's letter, the due date to respond has been extended to March 3.

**Idowu v. Rhode Island Commission for Human Rights and Cohoes Fashions of Cranston, Inc.**

The complainant appealed the Commission Decision and Order. The respondent filed a motion to dismiss the appeal on the grounds that it

was filed too late. The Commission filed the administrative record on May 17, 2006. On July 31, Judge McGuirl dismissed the appeal. Cohoe's attorney received the transcript of the Judge's decision on 9/24/07. She submitted a proposed Order to the Judge on October 15, 2007. Judge McGuirl's clerk indicated to Cohoe's attorney that she would like the proposed Order to be modified. The parties had a conference with Judge McGuirl on October 26 and all agreed with the Judge's recommendation that the Order state that the administrative appeal was dismissed. The Counsel for Cohoe's submitted a revised proposed order on October 26, 2007. On November 26, 2007, the Commission received a Petition for Certiorari directed to the Rhode Island Supreme Court from Mr. Idowu, who is representing himself on the Petition. On December 13, 2007, the Commission filed a Memorandum in Opposition to the Petition for Certiorari. On December 17, 2007, Cohoe's filed a Memorandum in Opposition to the Petition for Certiorari.

**J.J. Gregory and Sons v. RI Commission for Human Rights and Brenda Zeigler**

The Commission found that J.J. Gregory and Sons discriminated against Brenda Zeigler because of her sex. J.J. Gregory and Sons filed an administrative appeal. Its appeal was amended to include an appeal of the Commission's Decision on Damages and Attorney's Fees. The Commission filed the administrative record with the Court on February 14, 2008.

## **Joint v. DeMarkey and Rhode Island Commission for Human Rights**

**The individual respondent filed an appeal of the Commission Decision and Order and the Commission Decision on Attorney's Fees. The Commission filed the administrative record. The briefs were filed. The appeal was assigned to Special Magistrate Joseph Keough who rendered a decision on September 22, 2006. He held for the Commission on several procedural issues, but reversed the decision, holding that the complainant had not proved sex discrimination. He said that the respondent had waived his right to raise the issue that the charge was not timely filed. He held that the Commission complaint had given the respondent sufficient notice of the charges against him. He overturned the Commission determination that the respondent had discriminated against the complainant because of her sex, holding that it is not sex discrimination if a supervisor terminates an employee because their voluntary sexual relationship has ended. Mr. Joint's attorney filed a Motion for Attorney's Fees, asking that the Superior Court order the Commission to pay Mr. Joint's attorney's fees under the Equal Access to Justice Act. The complainant and the Commission filed a Petition for Certiorari, Mr. Joint objected. On June 22, 2007, the Petition for Certiorari was denied. On July 16, 2007, Counsel filed a Motion to Dismiss the claim against the Commission for respondent's litigation expenses. The Commission argued that the Equal Access to Justice Act does not apply to it. Mr. Joint filed an Objection to the Motion to Dismiss and a supporting memorandum on September 4, 2007. On September 18, Judge Patricia Hurst denied the**

**Commission's Motion to Dismiss. She interpreted the Equal Access to Justice Act (EAJA) exemption, which exempts agencies "charged by statute with investigating complaints", to exempt those agencies which are required to investigate and interpreted the FEPA, R.I.G.L. 28-5-17, to provide that the Commission may, but is not required to, investigate charges of discrimination, and therefore determined that the Commission is not exempt from the EAJA. On December 21, 2007, Mr. Joint filed a Motion for Summary Judgment, asking that attorney's fees be awarded to him. The Commission's objection and memorandum in support of its objection has been filed. Commission Counsel drafted a Motion for Summary Judgment and Memorandum in Support which Jim Lee of the Attorney General's Office reviewed and supplemented with additional arguments. The Commission's Motion for Summary Judgment and Memorandum in Support, signed by Commission counsel and Jim Lee, were filed on January 23, 2008. Justice Hurst has granted the parties' request that the two Motions for Summary Judgment be heard on the same date. The hearing is scheduled for April 8.**

#### **King v. City of Providence Police Dept.**

**This is a case in which the Commission issued a decision finding that the City of Providence had denied Mr. King a position as a police officer because of his age. The Commission had not yet determined damages when the FUD's decision came down, so the Commission decision was not final and the respondent had the opportunity to have the case heard in Superior Court. The respondent elected to**

have the matter heard before the Superior Court. Ms. Hiatt has been subpoenaed to testify at the trial. The trial had been rescheduled to late September. The plaintiff was going to request another continuance; it has been granted. The complainant's attorney has told the Commission that there is a calendar call on September 14, 2007 and that the trial may be scheduled in September or October. Counsel now says that the trial will be scheduled at a later date. On October 23, 2007, Counsel for Mr. King said that the trial would probably take place during the week of January 21. Counsel Hiatt is under subpoena for the trial. The trial has been rescheduled to the week of April 28, although that scheduling is not definite.

#### **Laboy v. Stat Health Services**

Counsel is trying to locate respondent's officers in order to ensure compliance with the Commission Decision and Order.

#### **MHRH v. Rhode Island Commission for Human Rights and the Estate of Dr. John Satti**

MHRH has appealed the Commission decision that MHRH retaliated against Dr. Satti and discriminated against him on the basis of his age. The Commission will file the record of the Commission proceeding.

#### **North Kingstown School Committee et al. v. Stephen Alberghini and the Rhode Island Commission for Human Rights**

The respondents appealed the Commission Decision and Order. The

complainant died on May 20, 2007. The School Committee and Mr. Daly agreed to be trained, as required by the Order. Commission Counsel attended a Superior Court status conference on November 14, 2007. At that conference, Dr. Haley's lawyer indicated that Dr. Haley would attend training if Judge Thompson ordered it. Judge Thompson ordered it. The parties signed a dismissal stipulation of the appeal, providing that the Commission may enforce its order that anti-discrimination signs be posted and that training take place. The School Committee has asked for and received the anti-discrimination posters. Respondents are now working on scheduling training for February 2008.

#### **Pilkington US AGR Auto Glass Replacement and Theroux v. D'Alessio and RICHR**

Pilkington and Mr. Theroux filed an appeal of the Commission Decision and Order. They made a motion to stay the Commission Order. The Court denied the motion to stay with respect to the Commission's order that the respondent post the Commission poster. The Court granted the motion to stay with respect to the rest of the Order, but Commission Counsel's request that the respondent be ordered to post a bond of \$300,000 was granted. In the meantime, the parties signed a stipulation which would encompass a settlement for Mr. D'Alessio, training for Pilkington's supervisors and dismissal of the case. On or before April 24, 2008, respondent should be submitting to the Commission verification of training of supervisors on anti-discrimination laws. The parties have agreed that the Bond is



released now that case is settled. There are questions to resolve with respect to the training of Mr. Theroux.

#### **Ponte v. GTECH**

The plaintiff filed a records subpoena for her case file, several named case files and any other disability charges against GTECH. The Commission provided copies of the complainant's cleared file. The Commission objected to providing any other records on the grounds that such dissemination would violate the Health Care Confidentiality Act and that redaction of the health care information would be burdensome. Notice has been given to the complainants whose files were subpoenaed and they have until June 4, 2007 to raise objections to disclosure of their health care information. One objection has been filed. Complainant's attorney to review Commission files. The files are ready for counsel to copy except for one file in which an objection has been raised. Counsel will notify us if she wants to come to the Commission to review the files.

#### **RICHR and Rossi v. Attruia**

A complaint for enforcement was filed and judgment entered against Defendant. Payments on the judgment are now made directly to individual complainant. Counsel to seek review of payment Order. Defendant agreed to Order holding that she could not get any recovery from personal injury case until such times as the matter was heard in the Superior Court. Order entered and counsels in personal

**injury case were notified of its entry. Personal injury case is moving along.**

#### **RICHR v. Cardinale**

**Justice Thunberg entered a Decision for RICHR on a Petition for Enforcement. Filed Motion for Entry of Order for hearing in July. Order entered. Execution levied on property. Cardinale filed an appeal with the Supreme Court. Mediation was held. Motion for withdrawal of defendant's appeal was filed. Waiting for Court approval.**

#### **RICHR v. Cardinale, et al.**

**A complaint alleging a transfer of real estate in violation of the Uniform Fraudulent Transfers Act was filed against Norman Cardinale, Mary Cardinale, Newport Developments LLC, AEGIS Lending and MERS. Depositions scheduled. Defendant faxed a letter on the Friday before Columbus Day indicating he could not attend the depositions on Tuesday. Suit against Aegis and Mers dismissed. Discovery pending. Default was entered against all remaining defendants. Default was removed by Court.**

#### **RICHR v. Cardinale, et al.**

**A complaint alleging a transfer of partnership interests in real estate in violation of the Uniform Fraudulent Transfers Act has been filed against defendants. Discovery commenced. Motions to compel will be filed.**

### **RICHR and Lovegrove v. Escolastico**

**RI judgment was obtained and sent to FL lawyer for collection. The FL attorneys have determined that defendant has very few assets and a small salary. Case settled and monthly payments have commenced. Monthly payments have stopped and FL counsel will review status. Lovegrove to pay FL counsel to attach wages of Escolastico.**

### **RICHR and Morin v. Teofilo Silva, et al.**

**A complaint for enforcement was filed on 3-24-05. Service of the complaint will be made once respondent can be located.**

### **RICHR and Zeigler v. Laura Sitrin, Finance Director of the City of Newport**

**Case resolved. Commission must annually monitor City training. Notice sent to the city regarding the annual training. No response from City re training, so a Motion to Adjudge in Contempt will be filed in early 2008 as the year within which training is to occur will have run by that time. Training completed for 2007.**

### **Seymour v. Harvard Pilgrim Health**

**Motion of the defendant to dismiss the complaint for failure to comply with discovery was down for hearing on May 7, 2006. Plaintiff produced discovery, case is moving forward in Court. Case settled. Waiting for papers to be filed with the Commission so that the file can**

**be closed.**

### **Tucker v. Blue Cross**

**The complainant filed an administrative appeal of the Commission's finding of no probable cause. The administrative record was filed in Court.**